Instructor Manual

Miller, Business Law Today – Comprehensive Edition: Text and Cases 13e 2022, 9780357634783; Chapter 14: Voluntary Consent

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# Purpose and Perspective of the Chapter

At this point in the text, your students have studied how a contract comes into existence, when a contract will not be enforced because it is illegal or against public policy, and how the law protects certain categories of people by allowing them to avoid their contracts. This chapter concerns another category of relief from the enforcement of contracts: a contract may be unenforceable if the parties have not voluntarily consented (i.e., assented) to the terms.

 In determining the voluntary consent of the contracting parties, courts look at a party’s objective intent. A court may find that voluntary consent is lacking because of mistakes, misrepresentation, undue influence, or duress (i.e., because there is no true “meeting of the minds”). If the law were to enforce contracts not voluntarily consented to by the contracting parties, injustice would result.

Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Define voluntary consent.

2. Describe the difference between bilateral and unilateral contracts.

3. Identify the various forms of mistake in the creation or execution of contracts.

4. Explain the intent to deceive.

5. Explain how duress affects a contract.

# Key Terms

**Bilateral mistake:** a mistake that occurs when both parties to a contract are mistaken about the same material fact.

**Innocent misrepresentation:** a misrepresentation that occurs when a person makes a false statement of fact that the person believes is true.

**Latent defect:** a defect that is not obvious or cannot readily be ascertained.

**Negligent misrepresentation:** a misrepresentation that occurs when a person makes a false statement of fact because the person did not exercise reasonable care or use the skill and competence required by the person’s business or profession.

***Scienter*:** knowledge on the part of a misrepresenting party that material facts have been falsely represented or omitted with an intent to deceive.

**Undue influence:** persuasion that is less than actual force but more than advice, and thus induces a person to act according to the will or purposes of the dominating party.

**Unilateral mistake:** a mistake that occurs when one party to a contract is mistaken as to a material fact.

**Voluntary consent:** knowledge of and genuine assent to the terms of a contract.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* **1 New Numbered Case Example:**
	+ on bilateral/mutual mistakes (2019)
* **1 New Numbered Example:**
	+ on innocent representation
* **New ALOE:** *The Problem of Contract Cheating*

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 14 (PPT Slide 3).*

1. **14-1 Mistakes** (PPT Slides 5-8)

It is important to distinguish between mistakes of fact and mistakes of value or quality. Only a mistake of fact makes a contract voidable. Also, the mistake must involve some material fact—a fact that a reasonable person would consider important when determining a course of action. Mistakes of fact occur in two forms—unilateral and bilateral (mutual). (***See* Exhibit 14-1 – Mistakes of Fact).**

* 1. **Unilateral Mistakes**
		1. A **unilateral mistake** occurs when only one party is mistaken as to a material fact. Generally, a unilateral mistake does not give the mistaken party any right to relief from the contract. In other words, the contract normally is enforceable against the mistaken party.
			1. **Example 14.1**
	2. **Bi-Lateral (Mutual) Mistakes**
		1. A **bilateral mistake** is a “mutual misunderstanding concerning a basic assumption on which the contract was made.”
		2. **Contract May Be Reformed –** Rather than rescind a contract flawed by a bilateral mistake, judges often prefer to reform the agreement.
			1. Reformation allows a court, using its powers of equity, to restore the original goals of the parties who entered into the contract.
				+ **Case Example 14.2: *Allen v. Charlevoix Abstract & Engineering Company***
		3. **When the Parties Reasonably Interpret a Term Differently –** A word or term in a contract may be subject to more than one reasonable interpretation.
			1. If the parties to the contract attach materially different meanings to the term, their mutual misunderstanding may allow the contract to be rescinded or reformed.
				+ ***See* Case Example 14.3: *Richard v. Anadarko Petroleum Corp.***
	3. **Mistakes of Value**
		1. If a mistake concerns the future market value or quality of the object of the contract, the mistake is one of value, and the contract normally is enforceable.
			1. **Example 14.4**
		2. The reason that mistakes of value do not affect the enforceability of contracts is that value is variable.
	4. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of mistakes in contracts. After answer is provided, review with students how mistakes affect a contract and its validity.*
1. **14-2 Fraudulent Misrepresentation** (PPT Slides 9-16)

Although fraud is a tort, the presence of fraud also affects the authenticity of the innocent party’s consent to a contract. When an innocent party is fraudulently induced to enter into a contract, the contract usually can be avoided because that party has not voluntarily consented to the terms.

* 1. **Misrepresentation Has Occurred**
		1. Typically, fraud involves the following elements:
			1. A misrepresentation of a material fact must occur.
			2. There must be an intent to deceive.
			3. The innocent party must justifiably rely on the misrepresentation.
			4. To collect damages, a party must have been harmed as a result of the misrepresentation.
		2. The first element of proving fraud is to show that misrepresentation of a material fact has occurred. This misrepresentation can occur by words or actions.
			1. Sometimes, a party agrees to enter into a contract on the basis of a promise that is not included in the document evidencing the agreement.
				+ ***See* Case 14.1: *McCullough v. Allstate Property and Casualty Insurance Co.***
		3. **Misrepresentation by Conduct –** Misrepresentation also occurs when a party takes specific action to conceal a fact that is material to the contract.
			1. ***See* Spotlight Case Example 14.5: *Selleck v. Cuenca***
		4. **Statements of Opinion –** Statements of opinion and representations of future facts (i.e., predictions) are generally not subject to claims of fraud.
		5. **Misrepresentation of Law –** Misrepresentation of law ordinarily does not entitle a party to be relieved of a contract.
			1. **Example 14.6**
			2. Exceptions to this rule occur when the misrepresenting party is in a profession known to require greater knowledge of the law than the average citizen possesses.
		6. **Misrepresentation by Silence –** Ordinarily, neither party to a contract has a duty to come forward and disclose facts, and a contract normally will not be set aside because certain pertinent information has not been volunteered.
			1. **Example 14.7**
			2. Normally, the seller must disclose only a latent defect—that is, a defect that could not readily be ascertained.
	2. **Intent to Deceive**
		1. The second element of fraud is knowledge on the part of the misrepresenting party that facts have been misrepresented. This element, usually called scienter, or “guilty knowledge,” generally signifies that there was an intent to deceive.
			1. **Example 14.8**
		2. **Innocent Misrepresentation –** If a person makes a statement that the person believes to be true but that actually misrepresents material facts, the person is guilty only of an innocent misrepresentation, not of fraud.
			1. **Example 14.9**
		3. **Negligent Misrepresentation –** Sometimes, a party will make a misrepresentation through carelessness, believing the statement is true.
			1. Such a misrepresentation may constitute negligent misrepresentation if the party did not exercise reasonable care in uncovering or disclosing the facts or did not use the skill and competence that the party’s business or profession requires.
				+ **Example 14.10**
	3. **Justifiable Reliance on the Misrepresentation**
		1. The third element of fraud is reasonably justifiable reliance on the misrepresentation of fact. The deceived party must have a justifiable reason for relying on the misrepresentation.
			1. Also, the misrepresentation must be an important factor (but not necessarily the sole factor) in inducing the deceived party to enter into the contract.
				+ **Case 14.2: *Cronkelton v. Guaranteed Construction Services, LLC***
	4. **Injury to the Innocent Party**
		1. *See Adapting the Law to the Online Environment – The Problem of “Contract Cheating”*
		2. ***See* Case 14.3: *Adeli v. Silverstar Automotive, Inc.***
1. **14-3 Undue Influence and Duress** (PPT Slides 17-18)
	1. **Undue Influence**
		1. **Undue influence** arises from relationships in which one party can greatly influence another party, thus overcoming that party’s free will.
		2. **One Party Dominates the Other –** In various types of relationships, one party may have an opportunity to dominate and unfairly influence another party. Minors and elderly people, for instance, are often under the influence of guardians (i.e., persons who are legally responsible for them).
			1. The essential feature of undue influence is that the party being taken advantage of does not exercise free will in entering into a contract.
		3. **A Presumption of Undue Influence in Certain Situations –** The dominant party in a fiduciary relationship must exercise the utmost good faith in dealing with the other party.
			1. When a contract enriches the dominant party in a fiduciary relationship, the court will often presume that the contract was made under undue influence.
				* **Example 14.11**
	2. **Duress**
		1. Agreement to the terms of a contract is not voluntary if one of the parties is forced into the agreement.
			1. The use of threats to force a party to enter into a contract constitutes duress, as does the use of blackmail or extortion to induce consent.
			2. Duress is both a defense to the enforcement of a contract and a ground for rescission of a contract.
	3. ***Knowledge Check Activity (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of undue influence. After answer is provided, review with students the definition of undue influence and examples of it.*
	4. ***Knowledge Check Video Activity (3) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of mistakes. After answer is provided, review with students the concept of mistakes and how they affect business contracts as well as the different types of mistakes.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Unilateral Mistakes, Bi-Lateral Mistakes, and Mistakes of Value ([14-1** **Mistakes], PPT Slides 5-8). Duration 15 minutes.**
	1. **What is the legal significance of the difference between a mistake in judgment as to market conditions and a mistake of fact?**
		1. Mistakes in judgment as to market conditions involve believing something is worth more than it ultimately proves to be. Mistakes of fact involve believing something is other than what it is. The legal significance of the difference between a mistake in judgment as to market conditions and mistakes of fact is that only under a mistake of fact can a contract be avoided.
	2. **Does a unilaterally mistaken party have any right to relief?**
		1. Generally, no, but there are exceptions. Relief may be granted if the other party knew or should have known that a mistake was made (e.g., a bid well below other bidders’ figures).
		2. Some states will not enforce a contract against a mistaken party if an error was due to a mathematical mistake, and it was done inadvertently and without gross negligence (e.g., a typographical error).
2. **Discussion – Determining When Misrepresentation Has Occurred, the Intent to Deceive, and Justifiable Reliance ([14-2 Fraudulent Misrepresentation], PPT Slides 9-16). Duration 20 minutes.**
	1. **The elements of fraudulent misrepresentation include misrepresentation of a material fact. Discuss this element.**
		1. Misrepresentation can be in words (“this is a Warhol,” if the work is by another artist). Misrepresentation can occur through conduct (e.g., concealment by showing samples that differ markedly from actual goods). All of us are expected to use care and judgment when entering into contracts, however—predictions (“this land will be worth twice as much next year”) or statements of opinion (“this car will last for years”) are ordinarily not subject to claims of fraud.
		2. A seller can use puffery without liability for fraud, but an expert’s statement of opinion to a layperson is treated as fact. As regards the law, at common law people are assumed to know the law where they live. A layperson should not rely on a statement made by a nonlawyer about a point of law. A misrepresentation of law (“you can build anything you want here”) does not normally entitle a party to relief from a contract.
		3. There is an exception if the person who makes the misrepresentation is a member of a profession that is known to require greater knowledge of the law than a layperson possesses (e.g., realtors are expected to know the law governing land sales and use). Disclosing some, but not all, of the facts can be deceitful. Nevertheless, normally, a contract cannot be set aside because certain pertinent information (e.g., a used car was in an accident) is not volunteered. That is, under normal circumstances, no party to a contract has a duty to disclose.
		4. If a serious potential problem or latent defect (e.g., a crack in a building’s foundation) is known to the seller but cannot reasonably be suspected by the buyer, the seller may have a duty to speak. Also, in a fiduciary relationship, one party’s failure to disclose facts that materially affect the other’s interests may constitute fraud.
		5. There are other exceptions. If circumstances change so that what once was true is now false, the party aware of the change has a duty to inform the other. Other exceptions are provided by statutes (e.g., the Truth-in-Lending Act).
3. **Discussion – When Undue Influence Occurs, Conduct that Constitutes Duress ([14-3 Undue Influence and Duress], PPT Slides 17-18). Duration 10 minutes.**
	1. **In what circumstance does undue influence occur?**
		1. Undue influence occurs in relationships in which one party can greatly influence another, thus overcoming the other’s free will (e.g., an attorney’s inducing a client to enter into a contract that benefits the attorney may indicate undue influence).
		2. When a contract enriches one party at the expense of another who is in a fiduciary relationship with or who is dominated by the enriched party, it may be presumed that the contract was made under undue influence.
		3. To rebut the presumption, the enriched party must show that there was full disclosure, that consideration was adequate, and that the other party received independent and competent advice before completing the transaction. A contract entered into under undue influence is voidable.
	2. **What is duress?**
		1. Duress involves conduct of a coercive nature. Forcing a party to contract by threatening a wrongful or illegal act (e.g., blackmail or extortion) is duress. Threatening to exercise a legal right (e.g., bring a civil suit) usually does not constitute duress.
		2. Being in need is not usually a situation that will lead to a finding of duress, but duress may be found if the party exacting the price has created the need. (An attorney tells a client, the day before the client’s trial, that unless the client agrees to pay a higher fee, the attorney will quit the case. The client agrees; the agreement is unenforceable.)
		3. Duress is a defense to enforcement of a contract and ground for rescission.

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# Additional Activities and Assignments

1. **MindTap** – Why Do Contract Mistakes Matter to Me?
	1. Online auto-graded activities connect the upcoming chapter to a real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **Mind Tap** – Learn It: Mistakes in Contracts; How Duress Affects a Contract; Statute of Frauds; Parol Evidence Rule
	1. Get familiar with one of the key concepts from the chapter.
3. **MindTap** – Check Your Understanding: Defenses to Contract Enforceability
	1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Bilateral Mistake
	1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: The Effect of Illegality
	1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resources

* MindTap Quick Lesson Videos:
	+ Contract Mistakes. Duration 3:45 minutes.
	+ Promissory Estoppel. Duration 3:05 minutes.
	+ Parol Evidence. Duration 2:42 minutes.
	+ Specific Performance. Duration 2.18 minutes.

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